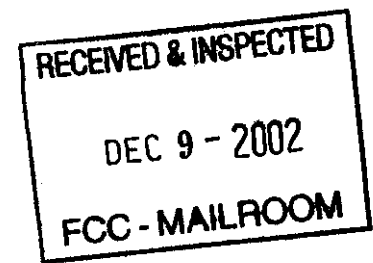


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**Ralph Reese**  
Vice Chairman

12/06/02

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 2-554

Re: Comments Regarding Rules and Regulations Implementing the Telephone  
Consumer Protection Act (TCPA) of 1991 (47 CFT Part 64)

Dear Secretary Dortch,

Reese Brothers, Inc. respectfully submits these comments to the Federal Communications Commission ("FCC"), in reponse to the FCC's Notice of Proposed Rulemaking, Rules and Regulations Implementing the Telephone Consumer Protection Act ("TCPA") of 1991, CG Docket No. 02-278, CC Docket No. 92090, FCC 02-250.

Our comments are divided into several sections by topic:

- Background of Reese Brothers
- Industry Background
- Conclusions
- Predictive Dialers
- Tax Exempt Nonprofit Organizations
- Current Business Specific Do-not-call Lists
- State Law Pre-emption
- Adramps and faxes
- Notes on the Industry

Sincerely,

A handwritten signature in black ink that reads "Ralph H. Reese".

Ralph H. Reese, Vice-chairman

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## **Background of Reese Brothers**

Reese Brothers is a provider of outbound teleservices to the commercial and nonprofit sectors and has been providing services since **1983**. Our firm currently employs over two thousand people and has won numerous awards for the quality and innovation of our services. We have used predictive dialers since 1991 before answer machine detect (“AMD”) technology existed. We have significant field experience using dialers, and we have designed and conducted experiments with various parameter settings and understand the way these parameters and impact one another. One of our principals is generally familiar with the predictive dialers offered by several companies and co-author of a patent involving inbound call center technology.

Reese Brothers was a founding member of the American Telephone Fundraisers Association (“ATFA”) and authored its code of ethics, in addition to donating all costs and services to develop and maintain ATFA’s national charitable do-not-call list, provided *as a public service*. We are also long time members of the Direct Marketing Association and the American Telemarketing Association. On behalf of our industry we were selected to participate in the original round of Federal Trade Commission’s public hearings on the Telemarketing Sales Rule as an expert, particularly on nonprofit specific issues, and we were part of the industry team included in the post rule-making process. In connection with this effort, we also designed and conducted the broadest survey on consumer attitudes toward telemarketing and worked with various media to market do-not-call initiatives to the public.

Reese Brothers is concerned about the issues being reviewed by the FCC as an employer, as a service provider, and as a sustainer of a reputable, effective consumer channel. **As** providers and employers, we are in an ongoing price competition with other direct marketing media from the internet to direct mail, and the predictive dialer has been instrumental in improving the cost efficiencies of our services (as well as creating the platform for quality standardization and improvement) and in creating jobs. As sustainers of our channel, we have to address the harm done by disrespect for the consumer in all forms, including overdialing or abandoned “abandoned calls.”

## Industry Background

Many of the questions posed by the FCC raise matters that are typically described as “commons” problems and as such the interposition of marketplace rules can be beneficial. Given the critical importance of the telemarketing channel to employment and the economy; the practical limitations of technology must be evaluated carefully for adverse impact. Any rules proposed should be evaluated to be sure that they are realistic and achievable with current technology and to make sure that at the margin the impact of the rules does not create undue risk to the industry and the economy. In other words, as a general approach we believe the FCC, if it chooses to implement regulations, should set standards and create rules that are achievable without technical controversy. Where there is uncertainty, it would be preferable **to** implement a workable standard that does not “push the technological envelope” as the risk of harm at the margin outweighs the benefit. We also believe that the record-keeping requirements for any proposed regulation be evaluated carefully, for technological feasibility and cost.

Predictive dialers have been the technological breakthrough that created our industry, and consequently impairment in the efficiency of predictive dialers has a disproportionate impact on our industry’s viability: Almost 70% of our costs are labor costs, so we are impacted by the constraints often referred to as the “Baumol Curve” (labor costs rise faster than general costs over time), whereas other direct marketing media, which are less sensitive to the cost of labor and employ fewer people, are under no such constraint.

The majority of a telemarketer’s labor costs are direct costs, related to agent and agent supervision. The call center industry has operated for the last twelve months with earnings that average less than 3% and telemarketing firms are underperforming inbound call centers. Consequently, regulation that had only **a** negligible impact on the **efficiency** of predictive dialers-- as little **as** 2-3% when only telemarketing firms are considered, and not more than **6%** when primarily inbound firms are also **included**-- would wipe **out** all profits in the industry. This cost pressure would, in turn, encourage cost-reduction behaviors that would not

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<sup>1</sup> The FCC cites a statistic provided by DMA that 34.6% of direct marketing sales occur through the telemarketing channel.

be in the public interest, such as elimination of quality control and acceleration of secular trends like off-shoring of call center labor and computer services outsourcing.

In making decisions as to appropriate regulation, the FCC should be sensitive to using technologies and building safety margins that are achievable rather than bleeding edge or risky. Gains that push the limit of the practical are likely to provide little additional benefit to the consumer but to have disproportionate economic impact on the telemarketing firm and its employees and customers.

Also, the FCC should recognize that those persons on do-not-call lists should not have a role in setting the agenda for regulation of predictive dialers. Their self-acknowledged preference is addressed by do-not-call list regulation, and preferences for contact rules to consumers should be focussed on those consumers who do wish to be called. Those who do not wish to be called should not set the agenda for those who do wish to be called.

In addition, the FCC should evaluate how it will regulate and enforce regulations for offshore telemarketing entities. Otherwise, new regulation will have the perverse effect of accelerating the off-shoring trend, resulting in loss of American jobs as well as providing no benefit, indeed possibly harm, to consumers. Will the FCC, for example, enforce seller liability rather than telemarketer liability for use of dialer regulation? And will it permit assignment of this liability, as is currently possible with DNC regulation, which could gut the regulations? Sellers could easily evade all regulation by assigning legal liability to the offshore firms beyond the jurisdiction of the FCC.

## Conclusions:

- A federal do-not-call list would be desirable for all concerned parties. Consideration should be made to offering a categorical option in addition to a blanket do-not-call option.
- Federal regulation should pre-empt state regulation, and the operational standard of the list should be improved over current state implementations.
- Telemarketing economics are dominated by labor costs and unit costs per call do not decline in a major way with scale. The intrinsic cost of a telemarketing transaction, combined with the implementation of a federal do-not-call list, would in and of itself address most consumer issues dealing with telemarketing. Already, complaints about telemarketing are greatly reduced as a result of state-level do-not-call lists.
- The FCC should not allow the preferences of those who do not wish to receive telephone solicitation (and choose to enroll in do-not-call lists) to set the agenda for those who wish to receive calls.
- Predictive dialer technology appears to be misunderstood and its capabilities overestimated in respect to list management and abandon rate management.
- Industry self-regulation has worked and imposition of mandated standards for telemarketing predicative dialer operations will have little benefit for consumers but will result in a major cost burden to the telemarketing industry.
- The benefits and cost burdens diverge most greatly as dialer standards get more and more unrealistic, below 7% (with a 5% goal) as a legal standard.
- Regulation that disrupts the economic viability of the industry will cause accelerated off shoring of telemarketing, resulting in loss of jobs and in neutering of the regulation which will be largely unenforceable.
- The nonprofit exemption should be continued, except when nonprofits or their agents are engaged in the sale of a commercial good or service.
- Adramps and faxes should be regulated in a manner similar to telemarketing, with some differences targeted to address operational specifics and economic fundamentals of these media.

## **Predictive Dialers**

A “predictive” dialer is by necessity a statistical instrument and statistics are managed by probabilities (predetermined ranges of error rates) rather than certainties. Statistics become more reliable as the sample base gets larger and to the degree that the future can be projected as an extension of the past. Outbound telemarketing<sup>2</sup> represents a difficult challenge to statistical modelling, as the character of the data rapidly changes due to a wide variety of factors (time of day, agent pool, list characteristics, offer and product, weather and television programming, etc.) and “local conditions” can and do change at any moment in time (e.g., an unprojected clumpiness to the data, such as a high sales rate in a micro-sample of the data or even a specific group of agents exiting a calling session). The dialer management problem is dynamic in nature and it cannot be completely automated-dialer operation also requires human input to manage the key dialer settings, which means that control mechanisms are subject to human as well as statistical error.

In short, dialers are not perfect, which is why there are dials that result in a situation where the phone is answered and no agent is available to handle the call (“abandoned calls”). The FCC has raised questions as to the whether there should be a maximum limit for abandoned calls and if so, what this maximum should be. The question of maximum limit should, in addition, address how the limit should be measured for technical feasibility and cost impact.

We do not believe that standards are necessary in this area, as the industry does currently use the available technology appropriately. Our experience is that our firm and our peers manage dialers to minimize negative events such as abandoned calls within the lower range of the practical. And the trend has been more and more in this direction of good practice, as the industry itself has received scrutiny from consumers and sellers who use the channel and because massive consolidation has resulted in many fewer and larger firms. A convincing argument could be made that unacceptable dialer practices will cause consumers to opt-out and enroll in do-not-call lists and that do-not-call list regulation is the most effective and cost-efficient way to regulate all

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<sup>2</sup> Predictive dialers are primarily used for consumer telemarketing. Because business telephones are answered virtually 100% of the time, there is no significant economic benefit from the use of a predictive dialer. Indeed, the automated attendants in businesses typically are typically by answer machine detect technology (“ASM”)

industry problems. It offers a market-driven solution that is easily implemented and widely understood.

If the FCC should implement national abandon rate regulation, using an abandon rate of 7% as the maximum, with a goal of 5%, which we believe is the lowest legal threshold achievable without great harm to the industry. Rather than proliferate detailed regulations and reporting requirements, the FCC should create a safe harbor for firms that can show a documented, well-managed process that normally produces compliance. And a legal standard of 7% will yield a lower real-world result, as control over dialers is not fine-grained: Firms must necessarily manage to a practical safety margin that is well below the legal standard. We respectfully submit our recommendations below for consideration, as the FCC evaluates proposed standards. These recommendations regarding abandon call management are based on experience and the goal of the recommendations is to produce reliable, consistent measures of greatest impact:

- Abandoned calls should be defined so as to be limited to those calls which a live person answers and which are terminated by the dialer prior to transfer to a live agent. Only these events can be counted reliably. Abandons should not be defined so as to include any measure of “time to transfer”, as these timings are not available in currently installed dialers. It is currently impossible to measure the time between an answer and a transfer, let alone report on the aggregate of this measure. Systems have expected response times to effect such a transfer and consultation by the FCC with dialer manufacturers would define what should happen, so it may be possible to impose such a “manufacturer’s warranty” as a merchantability requirement and any currently deployed systems should be grandfathered for some extended transition period, at least three years. It is inappropriate to place a burden for this factor on the telemarketer. Even if it could be captured, we do not believe that promulgating a standard for “time to transfer” will result in meaningful impact benefiting the consumer. Statistics generated with or without calls abandoned for overly long transfer times will be for all practical purposes the same, and efforts in this area are a distraction.
- The term “abandoned call” should be clearly defined and non-controversial in measurement, limited to those calls which are answered by a person and not transferred to a live agent before the person hangs up.
- Abandoned rates should be measured by using a standard definition that is related to good management of the rate and not subject to manipulation: (abandoned calls) divided by (all calls handled by a live agent + abandoned calls).

- The minimum period during which abandon rate (above) is measured should be the calendar month (with appropriate qualifiers for new entrants and partial months). The impact of abandons on consumers is based on the aggregate number of contacts made by a telemarketer over time and not the number in any given day. A short time period for measurement is also unduly burdensome from a record keeping perspective as well as almost unenforceable as a regulatory measure, as inadvertent violations will proliferate. Similarly, the “average of daily averages” is not an appropriate measure reflective of real behavior, **as** it is subject to manipulation.
- The **FCC** should recognize the significant burden that regulation **of** abandon rates could impose **on** firms and design record keeping requirements to minimize this burden. Dialers do not automatically track abandon rates in a way that is usable for regulatory purposes. All computation and associated record keeping will, thus, necessarily be outside the dialer and require custom programming by each firm. Firms should be given the option to measure the abandon rate by client or by all calls placed regardless of client. The latter measure is the measure that best captures the impact of abandoned calls on the public; however, many firms may not be able to measure in this way.’
- Any rules imposed on maximum limit should be controlling and no state should be permitted to impose different requirements. **It is** virtually impossible with today’s technology **to** manage abandoned calls on a state by state basis. Dialer efficiency depends on large intermixed lists and fragmenting lists, as would be required, would greatly impair the efficiency of the dialer. And tracking the data would be so difficult that it would render compliance virtually impossible.
- Data to demonstrate the safe harbor historic abandon rates will be quite voluminous and reconstruction complex. Mandatory source data record retention for this requirement should be limited to two months or less.
- The installed base of predictive dialers should be queried and the manufacturers of dialers identified. Technical information should be based on facts from the manufacturers and the economic impact of changes measured against the actual installed base.

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<sup>3</sup> Only the largest firms may have in place the expertise to manage compliance with regulation of abandon rate. The FCC should determine whether regulation of dialer abandon rates would create an impossible cost burden for small businesses.



- Abandoned goals of less than 5% are difficult to sustain without significant impact on productivity and labor costs. California is currently experimenting with a 3% threshold limit and this has proven to reduce productivity enormously (compared to our normal 5% standard). We have seen productivity declines of 12% to 25%, depending on a variety of factors, as well as additional costs related to management and measurement. This impairment, in turn, has also meant reduction in workforce hours, since the impact is not evenly distributed across day parts and due to the resulting increases in cost to our customers. During this same time period our rates charged to our largest telemarketing customer, using our predictive dialer, were increased by an about 6% in a three-month period. This increase was made on all work, not just California work, to compensate primarily for the productivity decline (of which California is less than 20%), implying average productivity declines in the upper ranges. As noted above, the impairments in productivity are such as to decimate the industry and raising prices by an additional 20-35%, as would likely be required, is not a viable option.
- There are acute risks to attempting to manage the abandon rate to less than 7% as a legal standard. The potential harm to the economy and employment dictate a conservative imposition of a standard. The benefit to the public for reduction below 7% **is** increasingly small; whereas, the impact on firms is increasingly great.
- It is acknowledged that each abandoned call is an inconvenience to the person who answers the call. However, the impact is less than represented by industry critics. If a consumer receives one telemarketing call a day every day of the year (or seven calls each week), a 7% abandon rate will result in one abandoned call every two weeks. A consumer who receives fourteen calls per week would receive one abandoned call per week. Because effective rates will be lower than legal standards, the actual rate of abandon would be less.
- A primary concern raised by the FCC deals with the impact of repeat abandons to the same phone number. The likelihood of a person's receiving consecutive abandons is very low at a 7% abandon rate and not appreciably different as the rate declines.<sup>4</sup>

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<sup>4</sup> The likelihood of consecutive dial attempts to the same phone number resulting in consecutive abandons is small at the 7% abandon rate:

Abandon Rate, first contact	failures per 1000 contacts	Abandon Rate, second contact	people who get consecutive abandoned contacts	per 1000 of original contacts
10.0%	100	10.0%	10	1%

The FCC has raised several questions about Answer Machine Detect (“AMD”). We believe that AMD is a necessary component of predictive dialing technology and only a minor factor in causing dialer abandons. The user-definable controls in AMD can impact its efficiency and conversely the abandon rate, but the impact is relatively constrained. However, detailed technical information is surely available from predictive dialer manufacturers, who can provide information about AMD and its impact on abandons. To the extent that there is abandon-rate regulation, AMD regulation would be in great part duplicative

The primary cause of dialer abandons is due to the statistical nature of the dialer itself. While improvements in AMD technology could provide marginal improvements in abandon rate, elimination of AMD would actually result in potentially higher abandon rates, since agents would be occupied by answering machines and fewer would be available to service people which makes for less efficient statistics. But in reality and from an economic perspective, elimination of AMD would, and we do **not** say this lightly, put all consumer-oriented telemarketing firms out of business. It would without question so raise the cost of the channel **as** to make it non-competitive.

If the FCC feels a need to regulate AMD, could do so by working with manufacturers to improve the underlying technology. More preferably and effectively, the FCC could work with answering machine manufacturers **and** carriers to develop technologies that emit a recognizable “answering machine” tone detectable in a standard way much like **a** busy signal, so the consumer’s phone rings only once or in more advanced “two stage” scenarios does not ring at all. Such a technology would be the most reliable way to improve consumer satisfaction and would have the additional benefit of reducing network traffic, the costs to carriers for this overhead traffic, and telemarketer costs.

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9.0%	90	9.0%	8.1	1%
8.0%	80	8.0%	6.4	1%
7.0%	70	7.0%	4.9	0%
6.0%	60	6.0%	3.6	0%
5.0%	50	5.0%	2.5	0%
4.0%	40	4.0%	1.6	0%
3.0%	30	3.0%	0.9	0%
2.0%	20	2.0%	0.4	0%
1.0%	10	1.0%	0.1	0%

### **Tax-exempt Nonprofit Organizations**

The FCC should not regulate calls made on behalf of a tax-exempt nonprofit organization that is engaged in exercising its first amendment rights or in fundraising, jointly or separately. This exemption from regulation, which is well established in law, should include both the nonprofit and its professional agents such as telemarketers. To do otherwise would require the FCC to wield Occam's razor routinely and likely ensnarl it in litigation that is at best tangential to the FCC mission and consumer complaints. Does the FCC really want to determine what is a political message or a religious message or to put its regulations in potential conflict with the IRS or other regulatory agencies? Indeed, does it wish to put itself into potential conflict with numerous state jurisdictions about what is and what is not "interstate commerce" and at what gain to consumers?

The FCC should regulate only the sale of commercial goods or services by (or on behalf of) a nonprofit. In the case of a nonprofit selling goods or services, or retaining a telemarketer to sell goods or services on its behalf, the FCC should establish brightline tests in determining whether a transaction is a regulated, commercial transaction. For example, does the sale of the good or service relate to the mission of the nonprofit, such as a hospital selling blood pressure screening? Does the IRS require the nonprofit to report income derived from the sale as unrelated business income? Or in the case of a gift associated with a fundraising appeal, is it "de minimus?" "De minimus" goods and services should be exempt and definition of "de minimus" should use the **IRS'** definitions and regulations. Payment for activity exempt from FCC regulation should be required to be made to the tax-exempt nonprofit organization.

## **Current Business Specific Do-not-call Lists**

Our experience indicates that the industry has implemented effective policies and procedures and that these work well procedurally. The percentages of consumers making requests to be placed on a specific business' do-not-call list are far lower than the overall rate of state do-not-call list participation, which suggests that these are different people.

We have not done formal studies of this, however, as we are not sellers. It would be instructive to study the overlap between several of the largest consumer sellers, and perhaps these lists to various state and **DMA** lists, to determine if consumer preferences are distinct enough to continue individual business lists. In the event that a federal do-not-call list is created, it would be beneficial, however, to allow businesses to eliminate all names on this list from their private lists, to avoid dual maintenance.

**As** noted separately, a survey conducted by our firm suggests that consumers would prefer granular choice to zero/sum choice in screening calls. However, in the event that a federal do-not-call list is implemented, sellers may prefer to utilize it for simplicity.

There is a danger that established sellers would have an unfair advantage over new market entrants, if the business list requirement is eliminated. Only empirical data would lead to a conclusion about this.

## **State Law Pre-emption**

Federal regulation should pre-empt state regulation wherever not ruled otherwise by the courts. Where federal telemarketing regulation cannot pre-empt state regulation legally for inter-state calls, there should be no regulation, as interstate operation is intrinsic to the conduct of telemarketing operations rather than being an upstream or downstream adjunct. Generally, most regulatory differences are of degree rather than kind, so maintenance of dual standards results in no practical difference to the consumer but potentially great regulatory consequence to the telemarketing firm for technical errors and great business impact, as multiple standards could greatly undermine the cost structure of the industry. We have already seen serious productivity impacts as a result of regulatory proliferation.

For example, it is virtually impossible under normal commercial circumstances to manage a predictive dialer to different abandon rate standards, so if the FCC defers to states, then the most aggressive state regulation will, in fact, pre-empt the federal regulation, rendering the FCC regulatory process moot. Similarly, dialers do not afford the controls to allow activation of AMD by state. Any workarounds to these limitations would be highly inefficient in the workplace and record-keeping intensive. Indeed, record keeping for abandon rates would be virtually impossible at a state-by-state level. This impossibility is perhaps the strongest argument in favor of a national standard, as it would be preferred to have one national standard to a proliferation of state standards.

In respect to do-not-call lists, the proliferation of lists is confusing to the consumer and often results in a cost and an inconvenience to the consumer. In addition, it can lead to data integrity problems due to multiple data sources. Would a consumer who registered on the federal list but not on the state list (or visa versa) really distinguish the lists? Investigation of complaints would also create a dual jurisdictional burden with no compensating benefit —to the consumer, to government, and to the telemarketing company. And peculiarities of DNC requirements also result in highly inefficient list management techniques. Without benefit of a clear, universal standard, there is no purpose to federal regulation of DNC lists.

## Adrams and faxes

Adrams and faxes are broadcast media, situated between radio and spam e-marketing. Both operate on the model where the “next unit” has a marginal and very low unit cost, and neither resembles telemarketing where the cost structure is driven by labor cost. As the cost of the “next unit” gets increasingly cheap, regulation has more and more consumer impact on abusive behaviors.

Adrams are a natural delivery mechanism for timely public announcements to pre-identified broadcast lists. Adrams can be useful for such things as notifying all students in a given school system that school was cancelled due to weather conditions. Adramp broadcasting is a perfect opt-in media. In respect to commercial speech, adrams are the immediate precursors of spam e-mail systems. Messages delivered by adrams may not qualify for the protection of speech. If permitted, they should at a minimum be made to comply with all commercial telemarketing laws and a few unique requirements:

- Hours of calling should be restricted to those during which telemarketing is permitted. Otherwise, adramp dialing will be permitted and will occur in the middle of the night to consumer homes.
- Random or sequential number dialing should be prohibited. Only dials to a specific name, address, and telephone number should be permitted.
- If possible, unsolicited dials should be restricted to business telephone numbers. Or rules should be crafted to enhance this desired outcome.
- Do-not-call list regulation should apply. All numbers on the federal DNC list should be required to be applied to adramp dialed lists. In addition, there should be a specific additional adramp DNC list.
- Immediately upon answering of the call by the consumer, there should also be a requirement for the seller to identify itself and the fact that this is a ‘computer talking’ with the option to “opt-in” or terminate the call and/or be removed from the business’ adramp list.

Unsolicited faxes should be regulated in a variety of ways:

- Hours of faxing should be restricted to those during which telemarketing is permitted. Otherwise, fax dialing will be permitted and will occur in the middle of the night to consumer homes.

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- Random or sequential number dialing of faxes should be prohibited. Only faxes to a specific name, address, and telephone number should be permitted.
  - If possible, unsolicited faxes should be restricted to business telephone numbers.
  - Do-not-call list regulation should apply. **All** numbers on the federal DNC list should be required to be applied to fax dialed lists. In addition, there should be a specific additional **fax** DNC list.

## **Some notes on the industry**

### Consumer Preferences and DNC lists:

In connection with FTC regulatory initiatives Reese Brothers conducted an extensive survey of consumer attitudes toward telemarketing. Among the survey's conclusions were:

- Consumers categorize telemarketing calls they receive and each category has a preference, independent of the specific business placing the call. The number of categories is small.
- Consumer surveys fail to distinguish between general “do not call” preferences and response to either categories of calls or specific offers and responses. However, consumers do make such distinctions.

For most consumers, a categorical do-not-call list would be preferable to an “all or nothing” do-not-call list, like those in place today. We would recommend that the FCC explore this alternative, offering consumers an opt-out choice by category of call or “all categories.” No follow-up survey has been undertaken.

### Phone Number Tracking for Do-no-call Lists

There are several record keeping flaws related to telephone numbers

- Many people share phone numbers and only one registers for a do-not-call list. In addition, this problem is dynamic with household constituents changing frequently. Only calls to the named party on the do-not-call request should apply.
- Phone numbers turn over, but typically no concomitant change is made in the do-not-call listing (either to update the consumer request to the new number or to remove the request from the old number). A properly administered list should tie to a “disconnect” database (into which major phone companies should report their disconnects on a regular basis) and/or a “new number” assignment database, so any disconnects are immediately removed from the federal do-not-call list.
- This problem is exacerbated, to the extent that cell phone numbers and land line numbers are indistinguishable by formula.



- The FCC might also consider calling all consumers on any eventual do-not-call list on an annual basis, to correct its list. This would seem a simple, direct, and relatively low-cost means of update.
- A system like the NCOA system might be implemented by the FCC. The cost of implementation and maintenance would be much higher but it would result in fewer consumer complaints.

#### Industry Size:

The FCC has cited a variety of estimates for the number of calls placed to the public by telemarketers each day. The estimates vary considerably; and it is unknown whether the estimates include only calls placed by predictive dialers or all sales calls (for example, sales calls that are business to business or extensions of personal selling networks). Additionally, estimates of predictive dials often cite industry capacity and greatly overstate actual practice. For example, one estimate cited 1,000,000 telemarketers working 13 hours each per day.

A reasonable estimate of industry size would suggest that 6,000,000 calls or less are completed daily.<sup>5</sup>

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<sup>5</sup> Most large scale outbound calling is done by service bureaus. Our firm is ranked in the top 10-20 service bureaus. If the top 10 firms average twice our size, and firms 10-20 are about the same size as our firm, and firms 21-50 average half our size; and if the top 50 firms represent half the capacity; then the industry places approximately 6,000,000 calls per day, based on the contacts made by our firm. We also believe that the industry size is in continual decline, as a result of do-not-call lists, answering machines, and related consumer technologies and expanded competition from internet and direct TV.